

IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

Securities and Exchange Commission,  
Plaintiff

v.

Docket No: 18-cv-942 (JGK)(BCM)

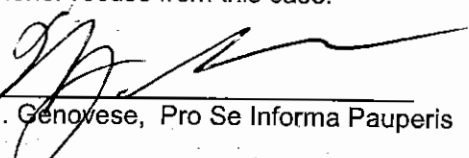
Nicholas J. Genovese, et. al.,  
Defendant

MOTION TO STAY

Now comes Nicholas J. Genovese (Pro Se) Informa Pauperis (IFP) to request the court to STAY the Order of the court of September 22, 2020 "Granting Plaintiffs request to file for a summary judgment" until the appeal has been resolved, Which I have filed Notice of Appeal on October 2, 2020 for the following reasons;

1. Judge Moses Granting Plaintiff his request to file for summary judgment (dated September 22,2020) is inconsistent with the rules set forth and the powers of a Magistrate Judge in this Discovery process as set forth in Judge Moses order regarding Pre Trial Management (dated June 18,2020).
2. The Order by the court dated September 22,2020 Granting Plaintiff his request to file for Summary Judgment clearly violates what the Magistrates powers EXCLUDE per 18 U.S.C. 636 Jurisdiction, Powers, and Temporary Assignment (b)(1)(A) "A judge may designate a Magistrate..., except for a judgment on the pleadings for a Summary Judgment."
3. That by granting this request by plaintiff to file for summary judgment wastes the time and resources of the court, the time and resources of the defendant and only further clouds the actual issue, which is Plaintiffs failure to produce all discovery as is plaintiffs responsibility as laid out in Rule 26 and in the rules set forth in Judge Moses order regarding Pre Trial Management (dated June 18, 2020).
4. That I filed Notice Of Appeal, Pro Se and Informa Pauperis (IFP) on a timely basis on October 2, 2020.

I would also add that by the court erroneously granting this request by Plaintiff it is becoming evident to me that this is another clear bias exhibited in favor for the Plaintiff, thereby violating my Fourteenth Amendment rights and I reserve the right to request that your Honor recuse from this case.

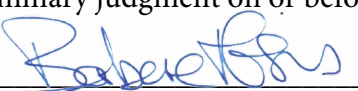
  
Nicholas J. Genovese, Pro Se Informa Pauperis

Mailed this day of October 2, 2020 in the LEGAL mailbox at MDC Brooklyn

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PRO SE OFFICE

The application for a stay pending appeal is DENIED. The order appealed from (Dkt. No. 44) is a non-dispositive scheduling order within the scope of the assigned magistrate judge's reference and is not appealable. Consequently, no stay is warranted. *Holmes v. Nat'l Broad. Co.*, 133 F.3d 907 (2d Cir. 1997); *United States v. Rogers*, 101 F.3d 247, 251-52 (2d Cir. 1996); *Rosenberg v. City of New York*, 2020 WL 5868153, at \*1 (S.D.N.Y. Sept. 4, 2020); *Mabry v. Hester*, 2014 WL 1848739, at \*1 n.1 (S.D.N.Y. May 8, 2014). Despite two recent extensions of his time within which to do so (Dkt. Nos. 26, 44), defendant Genovese failed to answer or otherwise respond to the Complaint on or before his most recent deadline, which was October 9, 2020. (Dkt. No. 44.) The entity defendants have never appeared or responded to the Complaint through licensed counsel, as required. Plaintiff may (but is not required to) seek certificates of default pursuant to Local Civ. R. 55.1, without prejudice to its right to move for summary judgment on or before October 23, 2020. SO ORDERED.

  
Barbara Moses, U.S.M.J.  
October 19, 2020